

Case # 880 -

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GRAFTON, MA

2022 MAR 14 PM 1:14

LAW OFFICES
LANE AND HAMER
A PROFESSIONAL CORPORATION

100 MAIN STREET
WHITINSVILLE, MASSACHUSETTS 01588

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March 10, 2022

Town of Grafton
Zoning Board of Appeals
Grafton Municipal Center
30 Providence Road
Grafton, MA 01519

Re: 45 Creeper Hill Road, Grafton, MA
Petition of Scott Morrison

Dear Board Members:

Enclosed herewith is our memorandum outline of opposition of Katherine Mason to the application of Scott Morrison for a variance at 45 Creeper Hill Road.

Very truly yours,



HENRY J. LANE

HJL/mxb
Encl.
TM4422.001

Cc: Philip Stoddard, Esq.

RECEIVED
MAR 14 2022
Zoning Board of Appeals

**THE GRAFTON ZONING BOARD OF APPEALS
PETITION OF SCOTT MORRISON
45 CREEPER HILL ROAD, GRAFTON, MA**

RECEIVED

MAR 14 2022

Zoning Board of Appeals

Memorandum in Opposition to Variance

On behalf of Katherine Mason of 43 Creeper Hill Road we submit the following comments in opposition to the Petition for a Variance under the provisions of Section 3.3.3.4. of the Grafton Zoning Bylaw, which requires vegetated buffers along property lines.

1. In order to grant a variance, there must be a finding that the petitioner has a hardship, financial or otherwise owing to circumstances relating to soil conditions, shape or topography affecting the land but not affecting the zoning district generally and that the variance will not result in a substantial detriment to the public good or nullify or substantially derogate from the intent or purpose of the by law. The application fails in all three aspects.
 - a. Since the applicant does not currently own the property, the applicant is not able to establish a hardship, financial or otherwise.
 - b. Topography is not unique. The applicant's lot includes steep slopes and extensive wetlands, but those features are appurtenant to the river system that traverses the zoning district and are not unique to 45 Creeper Hill Road.
 - c. Any hardship that exists was self-created. The premises at 45 Creeper Hill Road were part of a larger 5–6± acre parcel of land that was divided into lots by a plan dated May 9, 1986, and endorsed by the Grafton Planning Board on May 19, 1986. A copy of the plan is attached as Exhibit 1. The original parcel was divided into five lots by what can only be called a very contorted design in an apparent attempt to maximize the number of lots that could be created. Rather than incorporating steep slopes and wetland resources into one or more of the other four lots, the developer created four misshapen but buildable lots and isolated the steep slopes and wetland resource areas on Lot 5 which was apparently not buildable and has been assessed accordingly. Landowners clearly have the right to subdivide their land as they see fit but there is nothing guarantees a landowner the right to develop a particular number of house lots out of a particular parcel of land. The fact that the original developer chose to divide his land in such a way that one of the lots shown on the subdivision plan could not be developed in compliance with the provisions of the zoning bylaws that existed when the lot was created does not constitute a hardship that will support the issuance of a zoning variance.
 - d. The proposed variance would be a detriment to the neighborhood. The applicant's property as well as Ms. Mason's property is in a residential zoning district. The applicant is proposing to construct a 10-foot-high rip rap wall on the south side of the common property line and another 5-foot rip rap retaining wall on the northerly edge of the driveway entirely on Ms. Mason's property. In effect, someone traveling along

Creeper Hill Road will see 15 feet of rip rap wall dissected by a paved driveway. Although it is certainly possible to include high quality decorative retaining walls in residential landscaping, 15 feet of steeply sloped rip rap is not consistent with the development of an attractive residential neighborhood. In addition to being an eyesore, replacing the existing naturally occurring vegetation that provides the required buffer between the respective properties with 15 feet of rip rap walls creates safety hazard for the residents of Ms. Mason's property, including specifically younger children who might be attracted to the cliffs created by the walls and could be seriously injured if one were to fall over the edge.

2. The applicant does not have the permission of the owner of the land for which the variance is requested to apply for the variance. The applicant purports to have a driveway easement over the abutting land owned by Katherine Mason which the applicant intends to use as a driveway. Ms. Mason does not concede that the owner of 45 Creeper Hill Road actually has a driveway easement since the instrument that is the deed to the parcel does not create a driveway easement over her property but merely creates an easement "along Creeper Hill Road" see Exhibit 2. It is Ms. Mason's contention that even if the applicant has a driveway easement over her property that does not authorize him to develop the driveway in violation of the Grafton Zoning Bylaws, or request that zoning bylaws be varied with respect to her property.
3. The application does not accurately reflect the extent of the variance requested. The applicant alleges that he is requesting a two-foot variance from the ten-foot buffer requirement but in fact the relief requested requires a variance from the entire ten-foot buffer requirement on Ms. Mason's property as well as the entire ten-foot buffer on the applicant's property. The bylaw provision in question requires a ten-foot vegetated or landscaped buffer along either side of common property lines. In this case the applicant is proposing a steep rip rap wall on either side of the driveway and therefore eliminating the existing vegetated buffer on the property at 45 Creeper Hill Road as well as existing vegetated buffer on Ms. Mason's property. Opinions can vary with respect to what constitutes a landscaped buffer, but it is difficult to argue that a 10-foot rip rap wall qualifies as landscaping. In context, the requirement for a landscaped or vegetated buffer has to be more than a simple setback.

Since the applicant does not meet the requirements for the issuance of a variance, on behalf of Katherine Mason, we request that the variance be denied.

Very truly yours,

HENRY J. LANE

HJL/mxb
TM4422.001

CREEPER HILL ROAD COUNTY LAYOUT

N/F
CHEMTRON
CORPORATION

CREEPER HILL ROAD

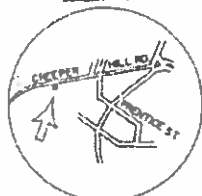
N/F
ROBERT A. & ANN M.
FLEMING

N/F
CHARLES H. NELSON

- REFERENCES:
1. PLAN OF PROPERTY OWNED BY KATHLENE M/S
DRAWN BY THOMPSON - LISTON ASSOCIATES, INC., DATED FEB 2, 1984
 2. COUNTY LAYOUT OF CREEPER HILL ROAD DATED OCT 3, 1937
 3. DEED OF LEO R. JONAS BOOK 8477 PAGE 193
 4. ASSESSORS MAP 10 PARCEL 15

- NOTE
1. *IRON PEG TO BE STAKED.
 2. SUBJECT TO SLOPE EASEMENT & DAMAGE EASEMENT
WCM LAYOUT FOR CREEPER HILL ROAD.

LOCUS MAP
SCALE: 1"=100'



Worcester County Registry
OF DEEDS - WORCESTER, MA
PLAN BOOK Sub. Map 13
Received Nov 21, 1986
Drawn 10-26-86 R. M.
ATTEST: [Signature]

RESERVE FOR REGISTRY USE	PLANNING BOARD APPROVAL UNDER SUBDIVISION CONTROL LAW NOT REQUIRED
	<u>James A. Nelson</u>
	<u>Raymond J. Nelson</u>
	<u>Robert L. Nelson</u>
BEING A MAJORITY	
DATE <u>May 19, 1986</u>	



I CERTIFY THAT THIS PLAN CONFORMS
WITH THE RULES AND REGULATIONS SET
FORTH IN THE AMENDMENTS TO THE
GENERAL LAWS, CHAPTER 34, SECTION 13A
SIGNED David L. Seabert

PLAN OF LAND IN THE TOWN OF
GRAFTON
PREPARED FOR:
B&W REALTY TRUST
79 CHERRY ST. SHREWSBURY
MASS
SCALE 1"=40' DATE 5-9-86

RUBIN ENGINEERING P.O. BOX 302 GRAFTON MA 01519 (617) 839-9328			
FIELDCHIEF	RG	RESEARCH	1
CALCULATION	2	DRAFTING	1
CHECKED BY	DET		
FIELDBOOK <u>1</u> PAGE <u>39</u>			

Exhibit 1

being unmarried, for consideration paid, and in full consideration of SEVENTY-FIVE THOUSAND and 00/100 (\$75,000.00) DOLLARS

GRANT TO RONALD E. CARLSON AND CARLO J. PAVARELLI, TRUSTEES OF R & C REALTY TRUST *
UNDER DECLARATION OF TRUST DATED 4/21/85, AND RECORDED IN BOOK 8787, PAGE 360

Wm Henry Marsh Road, Dudley, MA

with quitclaim covenants

the land in Grafton, Ma., Shown as Lots #3 & #4 on a plan entitled "Plan of Land in the Town of Grafton prepared for B. & W. Realty Trust, 79 Cherry St., Shrewsbury, Mass." dated 5-9-86 and recorded ~~in the Worcester District Registry of Deeds in Plan Book 566, Plan 13, more particularly described as follows:~~

Lot #3

BEGINNING at a point at the southeasterly sideline of Creeper Hill Road in said Town of Grafton and the southwesterly corner of Lot 2 on said plan;
THENCE S. 46° 05' 50" E. along the sideline of Lot #2 for a distance of 77.59 feet to a point;

THENCE N. 45° 14' 30" E. for a distance of 63.90 feet, to a point;

THENCE S. 43° 22' 11" E. for a distance of 75.00 feet to a point;

THENCE S. 88° 00' 44" E. along said Lot #2 for a distance of 287.55 feet to a point;

THENCE S. 09° 41' 26" E. for a distance of 84.00 feet to a point at the easterly corner of Lot #4 on said plan;

THENCE N. 85° 12' 52" W. along the sideline of said Lot #4 for a distance of 519.05 feet to a point;

THENCE N. 48° 45' 29" W. for a distance of 30.00 feet to a point at the southeasterly sideline of said Creeper Hill Road;

THENCE northeasterly along said sideline of Creeper Hill Road for a distance of 126.41 feet to the point of beginning.

Said parcel contains 40,193 square feet according to said plan.

Lot #4

BEGINNING at point at the southeasterly sideline of Creeper Hill Road in said Town of Grafton and the southwesterly corner of Lot 3 of said plan;

THENCE S. 48° 45' 29" E. along the sideline of said Lot #3 for a distance of 30 feet to a point;

THENCE S. 85° 12' 52" E. along the sideline of Lot #3 on said plan for a distance of 519.05 feet to a point;

THENCE S. 81° 33' 33" W. for a distance of 128 feet to a point;

THENCE S. 77° 21' 47" W. for a distance of 53.10 feet to a point;

THENCE S. 71° 40' 22" W. for a distance of 76.54 feet to a point;

THENCE N. 89° 36' 08" W. for a distance of 346.98 feet to a point;

THENCE N. 50° 01' 10" W. for a distance of 30 feet to a point at the southeasterly sideline of said Creeper Hill Road;

THENCE northeasterly along said sideline of Creeper Hill Road for a distance of 125.66 feet to the point of beginning.

Said parcel contains 38,633 square feet according to said plan.

Being the same premises conveyed to B.W. Realty trust by deed of Leo A. Joncas dated May 2, 1986 and recorded at the Worcester District Registry of Deeds in Book 9358, Page 368.

Reserving to the Grantor an easement for the benefit of Lot #5 on said plan for driveway, utility and other purposes normally incidental to said purposes along the said Creeper Hill Road, as shown on a "Plan of Driveway Easement owned by B & W Realty Trust" of 79 Cherry St., Shrewsbury dated July 8, 1987 by Rubin Engineering, One Grafton Common, Grafton, Ma. 01519 which plan is recorded in the Worcester District Registry of Deeds in Plan Book 580, Page 124, on July 31, 1987.

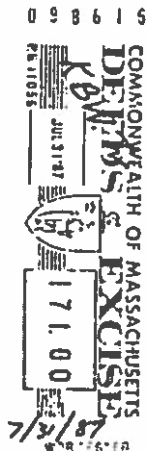
Jul 31 10 17 AM '87

Property Address: Lots 3 & 4, Creeper Hill Road, Grafton, Mass.

Witness hand and seal this 14th

day of July 1987

James H. B. Welch Trustee
James H. B. Welch Trustee
James H. B. Welch Trustee
James H. B. Welch Trustee



City of Commonwealth of Massachusetts

Worcester, ss.

July 14, 1987

Then personally appeared the above named

Kenneth B. Welch and James M. Bianchi
as Trustees of B.W. Realty Trust

and acknowledged the foregoing instrument to be

their freewill and deed, before me

[Signature]
Richard Ricker, Notary Public—~~Notary Public~~

My commission expires December 31, 1993

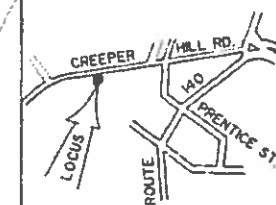
100-100

RECORDED
WOP 100-100-100
JUL 5 1987
C. Little

RESERVE FOR REGISTRY USE ONLY

N/F
CHARLES H. NELSON

CREEPER HILL ROAD COUNTY LAYOUT



LOCUS MAP
SCALE 1"=1000'

N/F
CHEMTRON CORPORATION



I CERTIFY THAT THE PREPARATION
OF THIS PLAN CONFORMS TO THE
RULES AND REGULATIONS OF THE
REGISTRARS OF DEEDS.
DAVID E. TEACHOUT P.L.S. #32659

I HEREBY CERTIFY THAT THE PROPERTY
LINES SHOWN ON THIS PLAN ARE THE LINES
DIVIDING EXISTING OWNERSHIP, AND THE LINES
OF THE STREET AND WAYS SHOWN ARE
THOSE OF PUBLIC OR PRIVATE STREETS OR
WAYS ALREADY ESTABLISHED, AND THAT NO
NEW LINES FOR DIVISION OF EXISTING
OWNERSHIP OR FOR NEW WAYS ARE SHOWN.

David E. Teachout
DAVID E. TEACHOUT P.L.S. #32659

PROPERTY LINE INFORMATION FROM PLAN BY
RUBIN ENGINEERING DATED MAY 9/1986 FOR
B & W REALTY TRUST.

WORCESTER DISTRICT REGISTRY
OF DEEDS - WORCESTER, MA
PLAN BOOK 580 PLAN 124
Received 346 31 1987
10 14 A M

ATTENT:

Charles H. Nelson

LOT 3

LOT 4
38,863 SQ. FT.

LOT 5
2.6 ACRES:

LITTLE BACKSTONE RIVER

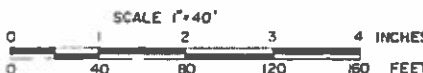
EXT. CB.

CREEPER HILL ROAD

PLAN OF
DRIVEWAY EASEMENT
Creeper Hill Road, Grafton
OWNED BY
B & W REALTY TRUST
79 CHERRY ST. SHREWSBURY

SCALE 1"=40' DATE JULY 8/1987

RUBIN ENGINEERING
ONE GRAFTON COMMON
GRAFTON MA, 01519
(617) 839-9526



ZONE RESIDENCE "A"